


Memorandum

To: Honorable John Chiang, Chairman Executive Director
Honorable Claude Parrish, Vice-Chairman
Honorable Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date: December 4, 2006

From: 
Karen Johnson, Deputy Director
Administration Department

Subject: **INTERAGENCY AGREEMENTS OVER \$1 MILLION
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

Pursuant to your instructions during the October 11, 2006, Board of Equalization (BOE or Board) meeting, the staff has revised the Interagency Agreement (Agreement) between the Department of Toxic Substances Control (DTSC) and the BOE, attached. As directed by the Board Members, this version of the Agreement incorporates the provisions of chapters 1, 2 and 5 of the Rules for Tax Appeals that were approved for publication by the Board on November 21, 2006. At the same time, the provisions detailing the petition and appeals process that were included in the Agreement in Exhibit E, section IV, have been deleted. In other words, the process for appeals involving DTSC fees are the same as the process for all other tax and fee programs administered by the BOE. In addition, Exhibit E, section V, pertaining to litigation, has been deleted, because it is not necessary, pursuant to California case law.

Except for a minor procedural change on page three of Exhibit A, paragraph 8.o., all of the changes that have been made to the Agreement since it was last submitted to the Board are in Exhibit E. Two new definitions have been added to paragraph A of section I., numbers 8 and 12, on page one. Subparagraph 1)e. has been added to paragraph D of section I, on page two. Paragraphs A through E in Section IV on page six replace the previous appeals process language. Miscellaneous additional changes have been made on page two (paragraphs I.B. & C.), page three (subparagraphs I.D.2) & 3)), and page five (paragraph II.D.) to make all provisions consistent with the change in Section IV and to make minor nonsubstantive corrections.

These changes have been reviewed and approved by BOE Legal Department staff, including Appeals Division staff, and by Property and Special Taxes Department staff.

Honorable John Chiang, Chairman

December 4, 2006

Page 2

DTSC legal staff is presently in the process of reviewing these changes. In anticipation of their agreement with these changes, we are requesting that the Board approve the Agreement as it is presently constituted and attached hereto. With this approval, the BOE Contract Manager is authorized to sign the Agreement, once DTSC agrees.

If you have any questions regarding the changes that have been made or other matters related to the Agreement, please contact Chief Counsel Kris Cazadd, at 323-7713, or me at 445-4272.

cc: Ramon J. Hirsig (MIC:73)
David Gau (MIC:63)
Lynn Bartolo (MIC:56)
Mickie Stuckey (MIC:57)
Kris Cazadd (MIC:83)

Memorandum

To : Mr. Ramon J. Hirsig
Executive Director

Date : December 5, 2006

From : Karen Johnson, Deputy Director
Administration Department

Subject: APPROVAL OF CONTRACT OVER \$1 MILLION

Your approval is requested to place an Administrative Agenda item before the Board at the December 12, 2006, Board Meeting.

Routine renewal of an interagency agreement that expired September 30, 2006.

- Toxic Substances Control, Department of (reimbursement)

Because this Agreement exceeds \$1 million, Board Member approval is required. Attached is a short description of the services to be provided under the Agreement.

Also attached is a copy of the Fiscal Year 2006-07 Agreement with the Department of Toxic Substances Control (DTSC).

The DTSC legal staff is presently in the process of reviewing this Agreement. In anticipation of their agreement, we are requesting that the Board approve the Agreement as it is presently constituted and attached hereto. With this approval, the BOE Contract Manager is authorized to sign the Agreement, once DTSC agrees.

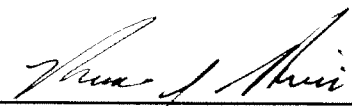
With your approval, the Board Proceedings Division will place this item on the Public Agenda Notice and provide a copy of the attachments to each Board Member.

If you have any questions or wish to discuss the Board's contracts further, please call Barbara Gilbertson at 445-2068.

KJ:ic/df
Attachments

cc: Ms. Charlene Yount
Ms. Barbara Gilbertson

Approved


Ramon J. Hirsig

Board of Equalization
Proposed Contract
Over \$1 Million

Contractor	Start Date	Expire Date	Estimated Total Cost	Purpose
Toxic Substances Control, Department of	10/1/2006	06/30/2007	\$3,084,000	<p>Services provided by BOE. The BOE administers the Hazardous Substances Tax Program for the Department of Toxic Substances Control. (Routine Renewal)</p> <p>Register taxpayers (hazardous waste generators, transporters and facilities); mail returns, deposit tax payments, follow up to obtain returns not filed; review filed returns, perform audits, assess fees, penalties and interest, collect amounts due; provide periodic reports to Department of Toxic Substances Control.</p> <p>A copy of the Fiscal Year 2006-07 Agreement is attached for your review and approval.</p> <p>The Department of Toxic Substances Control legal staff is presently in the process of reviewing this Agreement. In anticipation of their agreement, we are requesting that the Board approve the Agreement as it is presently constituted and attached hereto. With this approval, the BOE Contract Manager is authorized to sign the Agreement, once the Department of Toxic Substances Control agrees.</p>

AGREEMENT NUMBER 06-T3090	AMENDMENT NUMBER
REGISTRATION NUMBER	

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

Department of Toxic Substances Control

CONTRACTOR'S NAME

State Board of Equalization

2. The term of this

Agreement is:

October 01, 2006

through

June 30, 2007

3. The maximum amount \$3,084,000.00

of this Agreement is:

Three Million Eighty-Four Thousand Dollars and No Cents

4. The parties agree to comply with the terms and conditions on the following exhibits which are by reference made a part of the Agreement:

Exhibit A - Scope of Work

4 Page(s)

Exhibit B - Budget Detail and Payment Provision

6 Page(s)

* Exhibit C - General Terms and Conditions

GIA 101
(Number)

1/01
(Dated)

Exhibit D - Special Terms and Conditions

1 Page(s)

Exhibit E - Additional Provisions

6 Page(s)

* View at <http://www.ols.dgs.ca.gov> - Standard Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
Department of General Services
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

State Board of Equalization

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Barbara Gilbertson Contract Manager

ADDRESS

P. O. Box 942879
Sacramento, CA 94279-0024

STATE OF CALIFORNIA

AGENCY NAME

Department of Toxic Substances Control

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Sandra Poindexter Chief, Contracts and Business Management Branch

ADDRESS

P.O. Box 806
Sacramento, CA 95812-0806

☐ Exempt Per _____

EXHIBIT A

SCOPE OF WORK

1. As permitted under section 25174(c) of the Health and Safety Code, this Interagency Agreement (Agreement) is entered into between the Department of Toxic Substances Control, hereafter referred to as DTSC, and the State Board of Equalization, hereafter referred to as BOE.
2. The purpose of this Agreement is to provide for the BOE's collection of fees pursuant to the provisions of Chapter 6.5 of Division 20 of the Health and Safety Code (H&SC), pertaining to hazardous waste control and related fees.
3. The BOE agrees to continue collection of certain fees designated for deposit in the Hazardous Waste Control Account (HWCA). The BOE also agrees to continue collection of certain other fees designated for deposit in the Toxic Substances Control Account (TSCA). The BOE's collection of these fees shall be in accordance with the Hazardous Substances Tax Law (Law), Part 22 of Division 2 of the Revenue and Taxation Code (R&TC), beginning with Section 43001.
4. The DTSC agrees to reimburse the BOE for costs associated with collection of these fees, pursuant to this Agreement and H&SC sections 25173.6(b) and 25174(c).
5. The DTSC agrees to perform all the duties set forth in Exhibit A, Paragraph 9, and the BOE agrees to perform all the duties set forth in Exhibit A, Paragraph 8.
6. The Contract Managers during the term of this Interagency Agreement will be:

Department of Toxic Substances Control	Board of Equalization
Kyle Gardner, Chief, Fees Unit	Mickie Stuckey, Chief Environmental Fees Division
916-322-2448	916-324-4495
916- 445-9549 (FAX)	916-327-0859 (FAX)

Direct all inquires to the respective Contract Manager:

Department of Toxic Substances Control	Board of Equalization
Fees Unit	Environmental Fees Division
Kyle Gardner, Chief	Mickie Stuckey, Chief
P. O. Box 806 Sacramento CA 95812-0806	P.O. Box 942879, MIC: 57 Sacramento CA 94279-0057

Contract Managers may be changed upon written notification to the respective agency.

7. The DTSC and the BOE agree to cooperate fully, within the limits of the funding provided in the contract, in the exchange of information available to each of them individually that may be of use to the other in the administration of the aforementioned accounts. Each agency further agrees to meet at least quarterly, and to communicate by phone or email to share information that may be of use to each of them in effectively administering the program.

BOE RESPONSIBILITIES

8. The BOE agrees, within the limits of the funding provided, to perform all duties necessary to collect the fees, including, but not limited to:
 - a. Registration of feepayers:
 - 1) Register hazardous waste generators, sites accepting waste for disposal, facilities, and corporations or organizations identified by standard industry codes to be subject to the environmental fee.
 - 2) Assign an account number to each feepayer that identifies the appropriate fee program.
 - 3) Record the identity of each feepayer in a registration file, using the feepayer's name, address, account number, and EPA number or EDD number, as appropriate.
 - 4) Update the registration file to maintain current information.
 - b. Design, print, mail, and receive returns, and conduct follow-up measures to obtain returns not filed.
 - c. Deposit money received to the appropriate account for the appropriate period and fund.
 - d. Store and/or electronically scan returns and related documents.
 - e. Examination of returns:
 - 1) Review returns for errors and late payments.
 - 2) Assess applicable penalty and interest on late returns.
 - 3) Assess applicable fee, penalty, and interest on partial remittance and no-remittance returns.
 - 4) Contact feepayers regarding errors on returns.
 - 5) Collect any fee, penalty, and interest not paid.

- 6) Perform field or desk audits when deemed necessary by the BOE.
- f. Issue notices of determination when appropriate.
- g. Monitor, control, analyze, and process Petitions for Redetermination and Claims for Refund through the appeals process, as set forth in Exhibit E.
- h. Issue Notices of Redetermination or Notices of Refund.
- i. Provide individual feepayer collection or refund information upon request.
- j. Provide monthly reports for all HWCA and TSCA fees collected under this Agreement, to include original billings, amount collected, refunded, petitioned/appealed, offsets, account receivable balances, and other reports as may be available without additional programming costs.
- k. Provide quarterly reports stating the number of petitions filed, resolved, and pending for each fee, including the respective dollar amounts.
- l. Provide quarterly reports stating the total number of hours spent by appeals attorney staff handling Petitions for Redetermination and Claims for Refund challenging fees assessed by the BOE under the Law.
- m. Provide advisory services to the public.
- n. Provide one annual revenue estimate and one revised estimate as needed for the annual budget cycle. Provide revenue estimates on the impact of proposed legislation.
- o. Cooperate fully with the DTSC, or its designated representatives, to provide information on the BOE's revenue collection activities pursuant to this Agreement. The BOE shall respond by no later than thirty (30) calendar days from receipt of a written request from the DTSC. Such information will include, but is not limited to, the processes used and the type and amount of resources used to perform each task or subtask.
- p. Compare the DTSC facility billing list with the BOE return data and provide a report identifying any discrepancies.

DTSC RESPONSIBILITIES

9. The DTSC, in support of the BOE's registration, return processing, audit, and collection responsibilities, shall provide the following information to the BOE:
 - a. A data file of all generators that manifested waste for 2006, stating the total number of tons by EPA ID number, treatment, storage, or disposal facility, waste classification, and disposal method. The data file shall be accessible for download through DTSC's online manifest system (HWTS).

- b. A corresponding data file with the name, location, mailing address, and contact information applicable to each EPA ID number. Alternatively, these data files may be provided on CD-ROM, tape cartridges, or e-mail.
- c. Access to HWTS, which is critical to the proper administration of the Hazardous Waste Fee program. If, at any time, the DTSC is aware that HWTS's data is not accurate or the manifest images are not available, the DTSC shall immediately advise the BOE of the problem and how long it will take to resolve the problem.
- d. A report, following the DTSC's completion of the Administrative Completeness Review, listing all activity fees, within 45 days of the application date, to assure timely billing of the feepayers.
- e. Written notification at the end of each calendar quarter of any DTSC-approved PBR and TTU permit changes and new permits.
- f. Immediate written notification of payments received with any BOE billing document to permit prompt crediting of the payment and to prevent issuance of unnecessary delinquency billings or other collection action.
- g. A report listing all new EPA numbers issued to generators for California sites for each quarter, including the EPA number, name, physical location and mailing address, and phone number of each applicant, within sixty days from the end of each quarter.

MUTUAL COOPERATION REQUIREMENTS

- 10. The DTSC and the BOE agree to work cooperatively in implementing H&SC section 25189.3, which requires the DTSC to suspend the facility permit for non-payment of activity and/or annual facility fees when specified criteria have been met.
- 11. The DTSC and the BOE agree to implement the guidelines for their timely exchange of information, as set forth in Section I, paragraph D of Exhibit E.
- 12. The BOE agrees to continue to enhance its data systems at the Department of Technology Services. The DTSC and the BOE agree that development of new program applications or reports not currently produced for the DTSC must be negotiated and amended into this Agreement, with the written approval of both parties.
- 13. This Agreement requires an exchange of operational information. The DTSC agrees to provide written notification to BOE of unsatisfactory information within thirty (30) days of receipt from BOE. If the BOE does not receive such notification, it shall assume that the information provided was acceptable.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

Invoicing and Payment

1. The BOE shall bill the DTSC no more frequently than quarterly, for the costs BOE has incurred in collecting and administering the fees. Invoices shall include DTSC's name, time period covered, list of charges and hours billed, itemized in accordance with the Budget Detail Sheets (Attachments 1, 2, 3, and 4 to Exhibit B), which are incorporated into this agreement and made a part hereof, and the total amount owed. Invoices shall be mailed in duplicate (original plus one copy) to:

Department of Toxic Substances Control
Chief, Contracts and Office Services
1001 "I" Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

2. An invoice from the BOE to the DTSC will be deemed appropriate and approved if the DTSC does not notify the BOE otherwise within thirty (30) days from the date the invoice is received by the DTSC. In the event the DTSC disputes an invoice, the DTSC contract manager shall notify the BOE contract manager in writing of the following:
 - a. The BOE invoice number;
 - b. The amount disputed and/or requested credit; and
 - c. The basis of dispute.

If the BOE agrees with any part of DTSC's claim, it shall issue a "credit invoice" or other suitable notification identifying the dollar amount to be credited. If the BOE does not agree with DTSC's claim, it shall notify the DTSC in writing of the reason for denial of the claim. Either party may request resolution of an invoice dispute under the terms of this agreement. The DTSC and BOE Contract Managers, as identified in Exhibit A, shall use their best efforts to resolve any invoice disputes that arise.

3. Budget Contingency Clause: It is mutually agreed that if the Budget Act of the year covered by this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the DTSC shall have no liability to pay any funds whatsoever to the BOE or to furnish any other considerations under this Agreement, and the BOE shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for this program, the DTSC shall have the option to either cancel this Agreement with no liability occurring to the DTSC or offer an Agreement amendment to the BOE to reflect the reduced amount.

**State Board of Equalization
Hazardous Substances Program
Hazardous Substances Control Account**

OCT 2006 - JUNE 2007

2006-07 FY

Fiscal Year e/ f/

(1)

1. Personal Services <u>a/</u>	
Salary & Wages	\$ 1,756,000
Salary Savings	-131,000
Net Total, Salaries & Wages	1,625,000
Staff Benefits	593,000
Subtotal, Personal Services	<u>2,218,000</u>
2. Operating Expense & Equipment <u>a/</u>	
General Expense	69,000
Communications	20,000
Travel In-State	13,000
Facilities Operations	257,000
Subtotal, Operating Expense & Equipment	<u>359,000</u>
3. Administrative Support <u>b/</u>	
Mail Room	40,000
Cashiers	35,000
CATS	
Data Entry & Verification	23,000
Legal	20,000
Technology Services	49,000
Subtotal, Administrative Services	<u>167,000 <u>d/</u></u>
4. Overhead <u>c/</u>	<u>340,000</u>
TOTAL	<u><u>\$ 3,084,000</u></u>

a/ Special Taxes Departmentb/ Administrative Support includes both Personal Services and Operating Expense & Equipment.c/ Pro rata share of overhead costs.d/ The budgeted base within the category of Administrative Support has been adjusted based on actual costs incurred during the 2005-06 fiscal year.

e/ The cost of each budget cost category (Items 1 through 4) may vary up to 10% without DTSC approval so long as the total budgeted for that program budget is not exceeded. The BOE Contract Manager shall request, via a memorandum, the DTSC Contract Manager's approval for any budget cost category Transfer of Budget Allotments (TBAs) exceeding 10%. Upon signed approval by both parties, the memorandum will be attached to and made part of this interagency agreement.

f/ A contract amendment may be necessary depending on agreements reached with collective bargaining units.

		BILLING BREAKDOWN			
2006-07		2nd Qtr.	3rd Qtr.	4th Qtr.	Total
<u>Contract</u>		<u>Billing</u>	<u>Billing</u>	<u>Billing</u>	<u>Billing</u>
1. Personal Services: <u>a/</u>					
Salaries and Wages	\$1,756,000				
Salary Savings	-131,000				
Subtotal	1,625,000	0			\$0
Staff Benefits	593,000				0
Total Personal Services	2,218,000	0	0	0	0
2. Operating Expense & Equipment: <u>b/</u>					
General Expense	69,000				0
Communications	20,000				0
Travel In-State	13,000				0
Facilities Operations <u>c/</u>	257,000				0
Total OE & E	359,000	0	0	0	0
3. Administrative Support:					
Mail Services <u>c/</u>	40,000				0
Cashier <u>c/</u>	35,000				0
Data Entry & Verification <u>c/</u>	23,000				0
Legal <u>d/</u>	20,000				0
Technology Services <u>c/</u>	49,000				0
Subtotal Adm. Support	167,000	0	0	0	0
4. Overhead <u>c/</u>	340,000				0
TOTAL	\$3,084,000	\$0	\$0	\$0	\$0

a/ See Exhibit II for additional detail in support of quarterly billing.
b/ Actual amounts by quarter.
c/ One-quarter of contract amount for the first three quarters, adjustment made in the fourth quarter for actual.
d/ See Exhibit III for additional detail in support of quarterly billing.

DTSC Agreement No. 06-T3090 / BOE Agreement No. 06-021											Exhibit B - Attachment 3											Page 4 of 6																																																																																																																																			
HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL											Quarter of Fiscal Year 2006-07																																																																																																																																														
AUDIT ACTIVITY - HOURS BY FUNCTION b/																																																																																																																																																									
Classification Group a/											Supervision											Review											Direct Field											Selection											Worksheet											Petitions and Refunds											Direct Support											Indirect Support											Training											TOTAL HOURS c/																																											
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a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.																																																																																																																																																									
AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.																																																																																																																																																									
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ADMINISTRATIVE - CEA's, BT Administrators, Staff Services Managers, Associate Governmental Program Analysts, and Associate Information Systems Analysts.																																																																																																																																																									
b/ See time reporting attachment for description of time reporting codes.																																																																																																																																																									
c/ See Exhibit II page 2 of 2 for estimated 2006-07 hours to be expended and a summary of actual hours expended by quarter.																																																																																																																																																									

HAZARDOUS SUBSTANCES CONTROL ACCOUNT - TIME REPORTING DETAIL

____ Quarter of Fiscal Year 2006-07

AUDIT ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	ESTIMATED b/	"Info Only"				YEAR-TO		
		1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	DATE	TOTAL	
CLERICAL	2,771.5	0.0	0.0	0.0	0.0		0.0	0.0
AUDIT	13,030.6	0.0	0.0	0.0	0.0		0.0	0.0
COMPLIANCE	473.9	0.0	0.0	0.0	0.0		0.0	0.0
ADMINISTRATIVE	150.4	0.0	0.0	0.0	0.0		0.0	0.0
TOTAL	16,426.4	0.0	0.0	0.0	0.0		0.0	0.0

COMPLIANCE ACTIVITY - SUMMARY OF ACTUAL HOURS

Classification Group a/	ESTIMATED b/	"Info Only"				YEAR-TO		
		1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER	DATE	TOTAL	
CLERICAL	21,512.6	0.0	0.0	0.0	0.0		0.0	0.0
AUDIT	572.3	0.0	0.0	0.0	0.0		0.0	0.0
COMPLIANCE	19,463.4	0.0	0.0	0.0	0.0		0.0	0.0
ADMINISTRATIVE	452.6	0.0	0.0	0.0	0.0		0.0	0.0
TOTAL	42,000.9	0.0	0.0	0.0	0.0		0.0	0.0

a/ CLERICAL - Office Assistants, Office Technicians, Tax Technicians and Supervising Tax Technicians.

AUDIT - Tax Auditors, Associate Tax Auditors, Staff Tax Auditors, BT Specialists and Supervising Tax Auditors.

COMPLIANCE - BT Representatives, BT Compliance Specialists, BT Specialists and BT Compliance Supervisors.

ADMINISTRATIVE - CEA's, BT Administrators, Staff Services Managers, Associate Governmental

Program Analysts, and Associate Information Systems Analysts.

b/ Based on prior year experience.

Financial Management Division
Budget Section

STATE BOARD OF EQUALIZATION
LEGAL DIVISION

DETAIL OF DIRECT HOURS EXPENDED ON HAZARDOUS WASTE PROGRAM

OCTOBER 2006 - JUNE 2007
FISCAL YEAR 2006-07

FUNCTION CODES		<i>"Info Only"</i>				TOTAL
		1ST QTR	2ND QTR	3RD QTR	4TH QTR	
19	SUPERVISION					0.0
20/21	APPEALS					0.0
11	HEARINGS					0.0
12	COLLECTIONS					0.0
13	LEGISLATION					0.0
14	LITIGATION					0.0
15	OPINIONS					0.0
16	PUBLICATIONS					0.0
17	REGULATIONS					0.0
18	GENERAL					0.0
22	ENFORCEMENT					0.0
TOTAL HOURS		0.0	0.0	0.0	0.0	0.0

EXHIBIT D

SPECIAL TERMS AND CONDITIONS:

Amendment/Cancellation

Notwithstanding the Amendment Clause in Exhibit C (GIA 101), above:

This agreement may be amended only upon written mutual consent. Either party may cancel this Agreement upon ninety (90) days written notice to the other party.

Entire Agreement

This Agreement constitutes the complete and final agreement between the parties and supersedes all prior agreements, oral or written, concerning to the services provided herein.

Settlement of Disputes

Disagreements between DTSC and BOE over provisions of this Agreement shall be subject to discussion to achieve resolution. The discussion shall be held between the DTSC Executive Director and the BOE Chief, Administrative Support Division, and the BOE Contract Manager, or their designees.

Confidentiality of Data

All financial, statistical, personal, technical, and other data and information relating to the BOE's operations, which are designated confidential by the BOE and made available to DTSC in order to carry out this Agreement, or which becomes available to DTSC in carrying out this Agreement, shall be protected by DTSC from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the BOE. The identification of all such confidential data and information, as well as the BOE's procedural requirements for protection of such data and information from unauthorized use and disclosure, shall be provided in writing to DTSC by the BOE. DTSC shall not, however, be required to keep confidential any data or information which is or becomes publicly available, is already rightfully in DTSC's possession, is independently developed by DTSC outside the scope of this Agreement, or is rightfully obtained from third parties.

Force Majeure

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used here, "Force Majeure" is defined as follows: Acts of war and acts of God, such as earthquakes, floods, and other natural disasters such that performance is impossible.

EXHIBIT E

ADDITIONAL PROVISIONS

I. GENERAL PROVISIONS AND DEFINITIONS

A. Definitions

The terms used in this Agreement are defined as follows:

- 1) "Appeals conference" means an informal meeting conducted by a representative of the Board's Appeals Division to discuss a petition for redetermination or claim for refund.
- 2) "Board" or "BOE" means the State Board of Equalization.
- 3) "Board of Equalization" means the five-member State Board of Equalization.
- 4) "Board staff" means the staff of the State Board of Equalization.
- 5) "Department" or "DTSC" means the Department of Toxic Substances Control.
- 6) "Department staff" means the staff of the Department of Toxic Substances Control.
- 7) "Fee" means a hazardous waste fee or tax imposed under Chapter 6.5 of Division 20 of the H&SC, and collected pursuant to Part 22 of Division 2 of the R&TC.
- 8) "Hazardous waste fee law" means, for purposes of this Agreement, those provisions of chapters 6.5 through 6.11 (commencing with section 25100) of Division 20 of the H&SC that relate to the Hazardous Substances Tax Law.
- 9) "Hearing" means an adjudicatory hearing conducted by the Board of Equalization at one of its regularly-scheduled meetings.
- 10) "Law" means the Hazardous Substances Tax Law, Part 22 (commencing with section 43001) of Division 2 of the R&TC.
- 11) "Parties" means the BOE or the Board and the DTSC or the Department.
- 12) "Rules for Tax Appeals" means, for purposes of this Agreement, the BOE regulations governing petition and hearing procedures, California Code of Regulations, title 18, (new) division 2.1 (commencing with section 5000.1000), chapters 1, 2, and 5, as they were approved for publication by the Board of Equalization on November 21, 2006.

B. Statement of Intent

This Agreement is intended to structure and promote communication and cooperation between Board staff and Department staff. The parties agree that each agency shall contact the other whenever significant issues arise concerning the interpretation or application of the Law and the hazardous waste fee law.

C. Disagreements Over Interpretation

Disagreements between Board staff and Department staff over interpretation of one or more provisions of the hazardous waste fee law shall be resolved on a case by case basis according to the Rules for Tax Appeals and the administrative process set forth below in Section IV.

D. Guidelines for Timely Exchange of Information

1) Settlement cases:

- a. Upon the request of any feepayer disputing any fee,
 - (i) The DTSC may settle the dispute, as permitted under H&SC section 25205.23.
 - (ii) The DTSC agrees to provide written notification to the BOE within fourteen (14) calendar days of accepting a case for settlement review.
- b. The BOE, upon notification by the DTSC or referral of a case by Board staff, agrees to provide the DTSC with a summary of the case, any related file data, and any pertinent correspondence that may facilitate the DTSC's review of the settlement request. Board staff shall refer fee payers' requests for settlement to DTSC whenever requested by a fee payer during the administrative process.
- c. The Department staff agrees to notify the BOE within fourteen (14) calendar days of their decision to accept or reject a case for settlement, or when settlement is subsequently rejected by either party.
- d. The DTSC agrees to provide a copy of all executed settlement agreements to BOE by no later than fourteen (14) days after the execution date indicated in the agreements to facilitate timely implementation.
- e. Upon receipt of a notice that settlement has been rejected or a copy of the settlement agreement from DTSC, Board staff shall continue to process the fee payer's petition for redetermination and/or claim for refund, according to the terms of the settlement agreement if applicable, pursuant to the Rules for Tax Appeals and standard Board procedures, as appropriate.

- f. The BOE agrees to provide a quarterly report to DTSC listing all cases that are more than 6 months old, by no later than thirty (30) days after the end of each calendar quarter. The DTSC agrees to report on the status of each case and advise the BOE of any discrepancies by no later than thirty (30) days from receipt of this report. The six-month aging process begins as of the date that the DTSC receives the feepayer's written settlement request.
- 2) Appeals cases: The party receiving a request to provide information or an opinion relating to correspondence or issues in appeals cases shall respond pursuant to the Rules for Tax Appeals and direction from BOE Appeals staff.
- 3) Inquiries: Department staff and Board staff shall respond to each other concerning routine correspondence or general inquiries that do not require extensive legal interpretation or involve hazardous waste classification by no later than thirty (30) days from receipt of the inquiry, unless some urgency is indicated by the requesting agency. Such requests generally concern the status of a permit or a request for factual information about a feepayer. Extensions of time may be requested and granted, as needed. The party requesting the extension shall include, as part of the request, specific information on the progress made in preparing the response and the reason(s) for requesting the extension. Department or Board staff shall respond, as appropriate, to inquiries requiring extensive legal interpretation or involving hazardous waste classification, by no later than sixty (60) days from receipt of the inquiry, unless an extension of time is requested and granted.
- 4) Environmental Fee Newsletter

Board staff shall provide a draft of each edition of BOE's Environmental Fees Newsletter to Department staff at least fourteen (14) calendar days prior to publication to allow comment by Department staff on the content of the newsletter.
- 5) Fee Bulletins and Other Notices, Publications, and Web Site Postings

Department staff shall provide a draft of each edition of DTSC's Fee Bulletin and of all notices, publications, and Web site postings to Board staff at least fourteen (14) calendar days prior to distribution to allow comment by Board staff on the content.
- 6) Enforcement Actions

Department staff shall promptly notify Board staff regarding any enforcement actions or other activities undertaken by, or on behalf of, the DTSC that may affect fee collections.

II. ACTIVITIES PRIOR TO ISSUANCE OF A NOTICE OF DETERMINATION BY THE BOE

A. Conduct of Audits and Investigations by the BOE and Decisions Based Thereon

Board staff shall have complete discretion concerning the level of audit or investigation of any individual feepayer prior to the issuance of a notice of determination. The Board staff decision concerning the fee shall be based on the audit or investigation findings and consistent with existing precedent and the relevant statutes, except as otherwise set forth below. Board staff may provide to DTSC any information discovered through the audit or investigation that is relevant to the fee liability.

B. Billings or Changes in Billings That May Affect DTSC's Regulatory Program

Board staff may conclude, after an audit or investigation, that it is appropriate to issue a determination for one or more of the hazardous waste fees based on an interpretation of the hazardous waste fee law that may be new or novel or that otherwise may differ from the Department's interpretation. In such circumstances, Board staff shall follow the procedure set forth below. An interpretation that may affect the Department's regulatory program includes, but is not limited to, a factual situation requiring an interpretation or definition of the terms "responsible party," "closure," or "disposal." Issues that would not affect the regulatory program include, but are not limited to, a determination of the correct application of the statute of limitations, whether an entity is a corporation or an organization, or whether a fee may be returned when an application is withdrawn.

C. Notice to Department Staff of Billing or Change in Billing

Board staff shall provide written notification to Department staff when issuance of a determination requires an interpretation by Board staff of the hazardous waste fee law that may affect the Department's regulatory program, as described above. Such written notification shall be provided to Department staff at least fourteen (14) calendar days before Board staff is scheduled to meet with the feepayer to discuss the results of the audit or fourteen (14) calendar days before the notice of determination is sent, whichever is earlier. If Department staff responds in writing before the scheduled meeting or before the determination issues, Board staff shall issue the determination consistent with the Department's position concerning imposition of the fee.

If Department staff does not respond in writing before the scheduled meeting or before the notice of determination is sent, Board staff may proceed in accordance with its recommended interpretation.

Board staff shall, upon request, advise Department staff of the basis for the issuance of the determination in matters that do not present new or novel factual situations or require an interpretation of the hazardous waste fee law that may affect the Department's regulatory program.

D. Decisions Concerning Whether a Substance is a Hazardous or Extremely Hazardous Waste

DTSC has jurisdiction to determine whether a substance is a hazardous or extremely hazardous waste. R&TC section 43301 provides that: "No petition for redetermination of taxes determined under this part shall be accepted or considered by the [Board] if the petition is founded upon the grounds that the [DTSC] has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste." This provision also requires that: "Any appeal of a determination that a substance is a hazardous or extremely hazardous waste shall be made to the [DTSC]."

R&TC section 43452(d) provides that: "No claim for refund of taxes paid under this part shall be accepted, considered, or approved by the [Board] if the claim is founded upon the grounds that the [DTSC] has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste." Section 43452(d) *also* requires that: "Any appeal of a determination that a substance is a hazardous or extremely hazardous waste [that is the basis for a refund claim] shall be made to the [DTSC]."

Such appeals shall be handled in conformance with the provisions of Section IV, Appeals Process, below.

The DTSC shall implement a procedure for resolving, or otherwise settling feepayer disputes concerning the classification of substances as hazardous or extremely hazardous waste, as authorized by H&SC section 25205.23. The DTSC procedure shall ~~that~~ provides the feepayer an opportunity to present evidence and argument concerning such classification to a DTSC representative authorized to resolve or settle the dispute. The DTSC shall notify Board staff of the outcome of the resolution or settlement process, as set forth in Section I, subsection D.1), above, and Board staff shall process the case as appropriate, as set forth in the provisions of Section IV, Appeals Process, below.

III. Notices of Determination and Other Assessments

- A. Board staff shall issue a Notice of Determination to a feepayer:
- 1) As a result of an audit that generates additional fee liability;
 - 2) If the BOE is dissatisfied with the return or report filed by the feepayer;
 - 3) If the feepayer has not filed a return or report; or
 - 4) If the feepayer has made no payment or payments of the fees to the State.
- B. Board staff shall assess and bill the feepayer for fees due, as provided in the Law.

IV. Appeals Process

- A. The BOE appeals process shall be conducted pursuant to the Rules for Tax Appeals, which are incorporated by reference herein.
- B. With respect to DTSC decisions concerning whether a substance is a hazardous or extremely hazardous waste (paragraph D of Section II, above), section 5000.2017(a) of the Rules for Tax Appeals applies when the feepayer has filed a petition for redetermination. Section 5000.2050(c)(1) & (2) of the Rules for Tax Appeals applies when the feepayer has submitted a claim for refund.
- C. Department staff shall notify Board staff within fourteen (14) calendar days of its determination, made pursuant to section 5000.2017(a) or section 5000.2050(c)(1) & (2) of the Rules for Tax Appeals, as to whether the substance at issue is a hazardous or extremely hazardous waste.
- D. Upon receipt of DTSC's determination, Board staff shall continue to process the petition for redetermination or claim for refund pursuant to the Rules for Tax Appeals and standard Board procedures, as appropriate.
- E. Department staff shall provide a written report to the BOE by the last day of each calendar quarter on the status of all appeals cases forwarded to DTSC more than ninety (90) days prior to the date of the report for a determination on a hazardous or extremely hazardous waste issue raised in a petition for redetermination and/or claim for refund.